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**UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA**

JOSHUA E. LEMMENS,

Plaintiff,

v.

ANDREW SAUL,
Commissioner of Social Security,

Defendant.

Case No.: 2:20-cv-00881-BNW

UNOPPOSED MOTION FOR EXTENSION
OF TIME (FIRST REQUEST)

Defendant, Andrew Saul, Commissioner of Social Security (the “Commissioner”), by and through his undersigned attorneys, hereby moves for an extension of time to February 8, 2021 to file Defendant’s Electronic Certified Administrative Record and Answer to Plaintiff’s Complaint.

Defendant makes this request in good faith and for good cause, because the CAR, which must be filed with the Answer and is necessary to adjudicate the case, is not yet available. The public health emergency pandemic caused by COVID-19 has significantly impacted operations in the Social Security Administration’s Office of Appellate Operations (OAO) in Falls Church, Virginia, which is responsible for producing the CAR that must be filed with the Answer, per 42 U.S.C. §§ 405(g) and (h). Prior to the COVID-19 pandemic, to safeguard Personally Identifiable

1 Information (PII), all hearing recordings, which are part of the administrative record, were
2 downloaded onto compact discs and encrypted. OAO securely routed the encrypted discs to a
3 private contractor through a daily pickup and delivery service at the Official Duty Station (ODS) in
4 Falls Church, Virginia. The private contractor would transcribe the hearing recording and send the
5 paper copy of the hearing transcript back to OAO. OAO personnel would then scan the hearing
6 transcript into the electronic record or place the hearing transcript in the paper case file. Thereafter,
7 OAO personnel would assemble the administrative record in a prescribed order. After the advent of
8 COVID-19, the Agency has taken a number of concrete steps to transition its years-old in person
9 CAR preparation process to a fully virtual one.

10 OAO has been actively pursuing mitigation efforts to allow the remote preparation of
11 administrative records to ensure a continuity of operations. For cases in which the private
12 contractors were already in possession of hearing recordings for transcription, with the assistance of
13 the Office of Acquisitions and Grants (OAG), OAO received approval to receive these transcripts
14 from the private contractors via secured email, e.g., using password protection and redacted Social
15 Security Numbers. In April 2020, OAO began receiving such hearing transcripts from private
16 contractors via secured email.

17 For cases in which OAO had not yet submitted recordings to the private contractors before
18 March 16, 2020, OAO has been pursuing all available options to obtain transcriptions for these
19 cases. In May 2020, OAO began encrypting hearing recordings and securely emailing them to the
20 contractors for transcription. Through the month of May, OAO and the contractors worked to
21 resolve technical issues that arose, particularly with large files.

22 As detailed in the attached declaration from Jebby Rasputnis, Executive Director of the
23 OAO, the Commissioner has redesigned its business process to allow for virtual CAR production,
24 including adopting new technology, retraining staff, modifying blanket purchase agreements with
25 transcription services, and adding two more transcription vendors. In addition to the changes made
26 by the Commissioner, the agency's transcription vendors are also modifying their business
operations to help provide virtual services. As a result, the agency was able to process 1,372 cases

1 in September, 2,115 cases in October, and 1,709 cases in November. OAO must still navigate and
2 overcome significant challenges: (1) a backlog of nearly 10,200 cases, (2) challenges in prioritizing
3 older cases using the new process, and (3) the capacity of the contracted transcription services.

4 OAO is trying to prioritize CAR preparation based on objective factors, such as filing date,
5 and is working diligently to address the backlog of CARS. Out of fairness to all social security
6 claimants, Defendant respectfully requests that the Court defer to OAO's prioritization of cases for
7 CAR preparation and maintain consistency in the length of extensions granted in social security
8 cases, absent a showing of exceptional circumstances. Counsel for Defendant further states that the
9 Office of General Counsel (OGC) is monitoring receipt of transcripts on a daily basis and is
10 committed to filing Answers promptly upon receipt and review of the administrative records.

11 In addition, due to an oversight, the Commissioner did not initiate the CAR production
12 process in this case until recently, causing further delay. The agency apologizes for the oversight.
13 The oversight was not intentional, nor was it done to unduly delay these proceedings.

14 Given the volume of pending cases, Defendant requests an extension in which to respond to
15 the Complaint until February 8, 2021. If Defendant is unable to produce the certified administrative
16 record necessary to file an Answer in accordance with this Order, Defendant shall request an
17 additional extension prior to the due date.

18 The undersigned affirms that opposing counsel does not object to the requested extension.

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1 WHEREFORE, the Defendant asks the Court to enlarge the time for filing the Electronic
2 Certified Administrative Record and Answer to Plaintiff's Complaint until February 8, 2021.

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4 Dated: December 10, 2020

5 Respectfully submitted

6 NICHOLAS A. TRUTANICH
7 United States Attorney

8 /s/ Marcelo Illarmo
9 MARCELO ILLARMO
Special Assistant United States Attorney

10 **IT IS SO ORDERED**

11 **DATED:** 4:27 pm, December 15, 2020

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13 **BRENDA WEKSLER**
14 **UNITED STATES MAGISTRATE JUDGE**
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CERTIFICATE OF SERVICE

I, Marcelo Illarmo, certify that the following individual(s) were served with a copy of the foregoing document on the date, and via the method of service, identified below:

CM/ECF:

Hal Taylor: haltaylorlawyer@gbis.com

Attorney for Plaintiff

Dated December 10, 2020

/s/ Marcelo Illarmo
MARCELO ILLARMO
Special Assistant United States Attorney